

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Proposed Threatened Status and Critical Habitat for the Warner Sucker (*Catostomus warnerensis*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine the Warner sucker to be a threatened species. This action is being taken because: (1) The range and numbers of the species have been reduced substantially; (2) instream water diversions and artificial barriers are restricting movement and migration of suckers within and among streams; and (3) the species continues to survive precariously in what remains of its native habitat. The Warner sucker occurs in several lakes and their tributary streams in the Warner Valley of south-central Oregon. Critical habitat in Lake County, Oregon, is included in this proposed rule. Special rules are proposed to allow take of the Warner Sucker for certain purposes in accordance with Oregon State laws and regulations. If finalized, the rule would provide protection to the remaining populations of this species. The Service seeks data and comments from the public, State, local, and Federal agencies on this proposal.

**DATES:** Comments from all interested parties must be received by July 20,

1984. Public hearing requests must be received by July 5, 1984.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE., Multnomah Street, Portland, Oregon 97232. Comments and materials relating to this rule are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sanford R. Wilbur, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE., Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

**SUPPLEMENTARY INFORMATION:****Background**

The Warner sucker, a species endemic to the Warner Basin in south-central Oregon, occurs in several lakes and tributary streams in the basin. It was first described by Snyder in 1908. This species is particularly interesting in that it is part of a relict fauna isolated in remaining waters of a large Pleistocene lake that previously covered much of the basin floor. Residents of the area recall when the suckers (and trout) were very abundant and would ascend the creeks in the spring for spawning. Cope (1883) noted the great abundance of fishes and fish-eating birds in Warner Basin. The Warner sucker is known to occur in portions of Crump and Hart Lakes, the spillway canal north of Hart Lake, and Snyder, Honey, Twentymile, and Twelvemile Creeks (Andreasen 1975, Coombs *et al.* 1979, Swenson 1978). Substantial stream and lake habitat modification has resulted from the attempt to pump Hart Lake dry to allow farming of the bottom. The introduction of exotic fish species and the modification of stream flows into lakes of the Warner Valley by diversion structures have also modified the habitat. All these actions have contributed to the decline in Warner sucker populations (Bond 1974, Coombs *et al.* 1979, Kobetich 1977). The diversion structures are especially significant in that they prevent this obligatory stream-spawning sucker from reaching its spawning and rearing areas. Water pollution and siltation of gravel beds needed by the fish for spawning are also adversely affecting the lake and stream habitats in the basin. This species apparently prefers pools and slow sections of creeks for spawning. Gravel-bottomed sections are especially important.

The Warner sucker is listed as endangered in Bond's 1974 publication, "Endangered Plants and Animals of Oregon: I. Fishes." The species is also listed as endangered by Deacon *et al.* (1979). However, recent work of Coombs *et al.* (1979) documented continued, although reduced, spawning of this species and recommended a threatened classification.

The Warner sucker was included in the Service's Vertebrate Notice of Review published December 30, 1982 (47 FR 58454-59460). On April 12, 1983, the Desert Fishes Council petitioned the Fish and Wildlife Service to add the Warner sucker to the List of Endangered and Threatened Wildlife. After evaluation of the petition, the Service published a notice on June 14, 1983 (48 FR 27273-27274), which found that substantial information was presented in the petition to indicate that an action may be warranted to list the species.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Warner sucker (*Catostomus warnerensis*) are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** The Warner sucker is endemic to the Warner valley in south-central Oregon. It inhabits portions of Crump and Hart Lakes, the spillway north of Hart Lake, and some sections of Snyder, Honey, Twentymile, and Twelvemile Creeks (Andreasen 1975, Coombs *et al.* 1979, Swenson 1978). The species typically ascends streams tributary to lakes in the Warner Basin to spawn. However, instream barriers and diversion structures have often prohibited the movement of suckers into spawning streams during recent years. During years with high precipitation, enough water flows by the diversions so that the suckers can utilize limited reaches of the streams for spawning. However, during periods of low flows, all water is often diverted, thereby eliminating any chance for the fish to spawn. If suckers are successful in ascending the barriers, spawned-out fish

and progeny are likely to be restricted to small areas of streams because of instream barriers, or sometimes diverted into agricultural fields where they die. Habitat modification to streams and lakes in the basin has been substantial. Water diversion, used to promote farming activities, exists on all streams occupied by this species. Such water barriers and diversions are particularly detrimental to this obligatory stream-spawning species. Based on requirements of other species in the genus *Catostomus*, necessary spawning habitat probably consists of silt-free gravel bars and moderate, clean water flows. Postlarval and young-of-the-year Warner suckers utilize shallow backwater pools and stream margins where current is slight or nonexistent.

In addition to diversions, channelization of streams and overgrazing have disturbed soils in the watershed and degraded streams even further by allowing siltation of gravel beds where spawning would normally occur. Runoff and leachates containing fertilizers and pesticides from certain agricultural and ranching activities in the Warner Valley watershed put further stress on water quality of the lakes and streams.

*B. Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence to suggest overutilization for any of these purposes.

*C. Disease or predation.* Exotic centrarchid (sunfishes and freshwater basses) and ictalurid (catfishes) fishes have been stocked into lakes in the Warner Basin. Large adult centrarchids are capable of preying on all sizes of Warner sucker while the ictalurids can prey upon juvenile suckers. Exotic fishes also may introduce new parasites and disease organisms to which the sucker might be susceptible. Exotic salmonid fishes (trouts) introduced into the streams may also exert predation pressures.

*D. The inadequacy of existing regulatory mechanisms.* Oregon State law provides protection against taking of the Warner sucker by requiring a collecting permit but has no provisions for the protection of habitat.

*E. Other natural or manmade factors affecting its continued existence.* Any prolonged drought will hasten the demise of the Warner sucker if all or most of the water in the streams is diverted. The reduced numbers of populations and individuals make this species more susceptible to any natural or manmade factors that adversely affect it.

The Service has carefully assessed the best scientific information available

regarding the past, present and future threats faced by this species in deciding to propose this rule. Based on this evaluation, the proposed action is to list the Warner sucker as threatened. The range and numbers of the species have been reduced substantially and alteration of habitat (e.g., instream water diversions and artificial barriers) continues. Proper and adequate management could prevent the species from becoming endangered. Recent status information has provided essential habitat data and indicates that overcollecting is not a major threat. Hence, it appears prudent to propose critical habitat.

#### Critical Habitat

Critical habitat as defined by Section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for the Warner sucker to include the following streams in Lake County, Oregon, and 50 feet on either side of the streams: 4.0 stream miles of Twelvemile Creek, 3.5 stream miles of Twentymile Creek, 1.5 stream miles of the spillway north of Hart Lake, 2.5 stream miles of Snyder Creek and 14.5 stream miles of Honey Creek. The 50 foot riparian zone on each side of the stream is included to protect the integrity of the stream ecosystem. The Service determines that the maintenance of this riparian zone is essential to the conservation of the Warner sucker. Riparian vegetation helps prevent siltation and run-off of other pollutants. Shading from small trees and shrubs in the riparian zone helps maintain suitable water temperature and dissolved oxygen levels in the streams. These stream areas include adequate spawning and rearing habitat for the species. The areas proposed do not include the entire historic or present habitat of this fish and modifications to critical habitat descriptions may be proposed in the future.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or which may be affected by such designation. Such activities are identified for this species as follows:

1. Overgrazing by livestock, which would eliminate riparian vegetation and lead to streambank erosion and subsequent siltation of the stream and lake environment.
2. Introduction of exotic fishes into streams or lakes of the Warner Valley that might compete with or prey on Warner suckers.
3. Construction of additional diversion dams on streams inhabited by the Warner sucker.
4. Channelization or diversion of streams inhabited by the Warner sucker.
5. Pollution of streams and lakes in the Warner Valley inhabited by the Warner sucker.

No activities involving Federal agencies are presently known which directly impact on the habitat of the Warner sucker.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained at the time the final rule is prepared.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, required Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see

proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is actually listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of prohibitions that generally apply to all threatened fish or wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has discretion under Section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of a threatened species. The Warner sucker is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State of Oregon regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collecting permit system is more than adequate to protect the species from excessive taking, so long as such take is limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, or other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, the special rule allows take to occur for the above-stated purposes with the need for a Federal permit if a State collection

permit is obtained and all other State wildlife conservation laws and regulations are satisfied. The special rule also acknowledges the fact that incidental take of the species by State-licensed recreational fishermen is not a significant threat to the species. Therefore, under this special rule such incidental take would not be a violation of that Act if the fisherman immediately returns the individual fish taken to its habitat. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory proposal is necessary and advisable for the conservation of the Warner sucker.

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Warner sucker;
- (2) The location of any additional populations of the Warner sucker and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of this species;
- (4) Current or planned activities in the subject area and their probable impacts on the Warner sucker; and
- (5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on the Warner sucker will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such

requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### Literature Cited

- Andreasen, J.K. 1975. Systematics and status of the family Catostomidae in southern Oregon. Ph.D. Dissertation. Oregon State Univ. 76 pp.
- Bond, C.E. 1974. Endangered plants and animals of Oregon. I. Fishes. Oregon State Univ. Agricultural Experimental Station Special Report 205 (revised). 9 pp.
- Coombs, C.L., C.E. Bond, and S.F. Drohan. 1979. Spawning and early life history of the Warner sucker (*Catostomus warnerensis*). Report to U.S. Fish and Wildlife Service, Sacramento, California. 52 pp.
- Cope, E.D. 1883. On the fishes of the Recent and Pliocene lakes of the western part of the Great Basin, and the Idaho Pliocene Lake. Proc. Acad. Nat. Sci. Philadelphia. 1883:134-166.
- Deacon, J.E., G. Kobetich, J.D. Williams, S. Contreras et al. 1979. Fishes of North America endangered, threatened, or of special concern: 1979. Fisheries. 4:29-44.
- Kobetich, C.C. 1977. Report on survey of Warner Valley lakes for Warner suckers, *Catostomus warnerensis*. Report to U.S. Fish and Wildlife Service, Sacramento, California. 6pp.
- Snyder, J.O. 1908. Relationships of the fish fauna of the lakes of southeastern Oregon. Bull. Bur. Fisheries. 27(for 1907): 69-102.
- Swenson, S.C. 1978. Report on investigations on *Catostomus warnerensis* during spring 1978. Unpublished report. 6 pp.

#### Authors

The primary authors of this rule are Dr. Jack E. Williams and Dr. Kathleen E. Franzreb, Endangered Species Office, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916/440-2791).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

## Proposed Regulations Promulgation

## PART 17—(AMENDED)

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, as set forth below.

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

Species		Historic range	Veterebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
Sucker, Warner.....	Catostomus warnerensis	U.S.A. (OR) .....	Entire .....	T.....		17.95(e)...	17.44

3. It is further proposed to add the following new paragraph (h) as a special rule to Section 17.44:

## § 17.44 Special rules—fishes.

(h) Warner sucker (*Castostomus warnerensis*)

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; (ii) incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) above.

4. It is further proposed to amend § 17.95(e) by adding critical habitat of the Warner sucker as follows: The position of this entry under § 17.95(e) determined at final rule time (follows the same sequence as the species occurs in § 17.11).

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under Fishes to the List of Endangered and Threatened Wildlife:

## § 17.11 Endangered and threatened wildlife.

(h) \* \* \*

## § 17.95 Critical habitat—fish and wildlife.

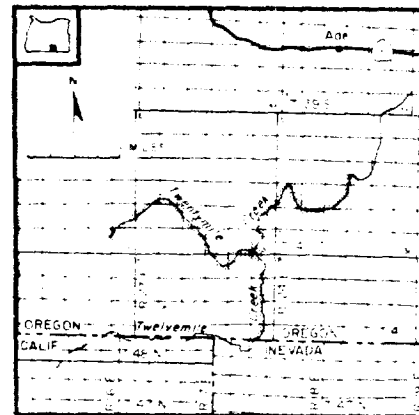
(e) Fishes

Warner Sucker (*Castostomus warnerensis*)

Oregon: Lake County.

1. *Twelvemile Creek*—4.0 stream miles and 50 feet on either side of the stream commencing from the confluence of Twelvemile Creek and Twentymile Creek upstream including those portions of Twelvemile Creek in T40S, R23E, Section 35; T41S, R23E, Sections 1, 2, 12, 13, 23, and 24.

2. *Twentymile Creek*—approximately 18 stream miles and 50 feet on either side of the stream commencing from about 9 miles upstream of the junction of Twelvemile and Twentymile Creeks to a point about 9 miles downstream of the junction including those portions of Twentymile Creek in T40S, R22E, Sections 25, 35, and 36; T40S, R23E, Sections 19, 20, 24, 25, 28, 29, 30, 33, 34, 35, and 36; T40S, R24E, Sections 15, 16, 19, 20, 21, 22, 28, 29, 30; T41S, R23E, Sections 2 and 3.

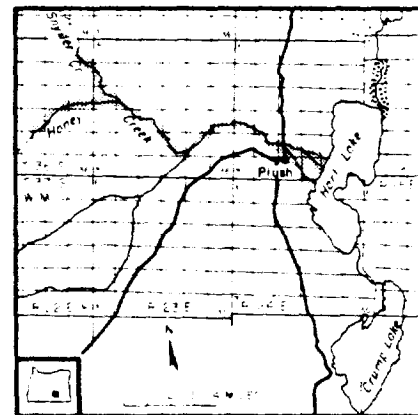


3. *Spillway north of Hart Lake*—2 stream miles and 50 feet on either side of the waterway commencing from its confluence with Hart Lake to a point 2 miles downstream including those portions of the waterway in T36S, R24E, Sections 7, 18, and 19.

4. *Snyder Creek*—3 stream miles and 50 feet on either side of the stream commencing

from the confluence of Snyder Creek and Honey Creek to a point 3 miles upstream on Snyder Creek including those portions of Snyder Creek in T36S, R22E, Sections 1 and 12; T36S, R23E, Sections 7, 17, and 18.

5. *Honey Creek*—approximately 16 stream miles and 50 feet on either side of the stream commencing from the confluence of Honey Creek and Hart Lake to a point 16 miles upstream on Honey Creek including those portions of Honey Creek in T36S, R24E, Sections 19, 20, 27, 28, 29, 30, 33, 34, and 35; T36S, R23E, Sections 17, 18, 20, 21, 22, 23, 24, 26, 27, and 28; T36S, R22E, Sections 13, 14, 22, and 23.



Constituent elements of all areas proposed as critical habitat include streams 15 feet to 60 feet wide with gravel-bottom shoal and riffle areas with intervening pools. Streams should have clean, unpolluted flowing water and a stable riparian zone. The streams should support a variety of aquatic insects, crustaceans, and other small invertebrates for food.

Dated: May 7, 1984.

G. Ray Arnett;

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-13567 Filed 5-18-84; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 651

## Atlantic Groundfish (Cod, Haddock, and Yellowtail Flounder); Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings.

**SUMMARY:** NOAA is holding five public hearings and is providing a comment period to solicit comments on a proposal to allow only 5½ inch mesh cod ends on board a vessel in the large mesh area for groundfish. This action is necessary to